

INVENTOR: HUXEL, Edward T.
Serial No. 10/047,579

REMARKS

Issues Raised in the Office Action

Claims 1-12 are currently pending in the application. By this Paper the Applicant amends existing claims 8, 10 and 11.

Terminal Disclaimer in Response to Provisional Obviousness-Type

Double Patenting Rejection Over A Pending Application

The examiner identified both a nonstatutory double patenting rejection and an obviousness-type double patenting rejection. The applicant submits, below, a terminal disclaimer with respect to commonly owned patent application serial number 09/659,530, filed on September 12, 2000. The applicant believes that this terminal disclaimer is sufficient to overcome both grounds of the double patenting rejection.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Terminal Disclaimer

Petitioner hereby disclaims, except as provided below, the terminal part of any patent granted on the instant application, which would extend beyond the expiration

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date of any patent granted on Application No. 09/659,530, filed on September 12, 2000, as shortened by any terminal disclaimer. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the above-listed application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors, or assigns.

Claim Rejection Remarks

Claim 7 was rejected under 35 U.S.C. §102 as being unpatentable over Miller et al.

With respect to Claim 7, Miller simply does not teach the steps of dispensing a first layer of preexisting solid onto a work surface followed by dispensing a liquid layer onto the dispensed preexisting solid layer then allowing the liquid to form a solid and dispensing a second layer of a preexisting solid onto the formed solid created by the solidification of the liquid mixture previously dispensed. Miller, et al. did not teach anything other than the application of a homogeneous mixture to a moving belt which passes through a cooling tunnel so that the homogeneous mixture is cooled on the belt.

Therefore, claim 7 is not anticipated by Miller and is believed to be in condition for allowance.

Claims 1-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al in view of Virtanen.

In paragraph 14 of the Office Action, it is stated "Virtanen teaches a method of producing a food product by adding solids such as salt, sugar, and spices (Column 3, Line 10) to a cooled, solidified food product (Column 2, Lines 34-44). It would have been obvious to one of ordinary skill in the art to incorporate the separate application of solids taught by Virtanen into the invention of Miller, et al. since both are directed to methods of solidifying liquids, since Miller, et al. already included the use of salt and spices (Column 5, Lines 19-28), . . ."

The citation to Virtanen at Column 3, Line 10 may be better understood if the entirety of the Virtanen section comprising Column 3, Lines 1-14 is considered. When the entirety of this section is read as a whole, it is clear that Virtanen does not apply solids to the exterior of the frozen item, rather, Virtanen is discussing the application of a liquid gravy layer which is frozen upon the already frozen portion piece. The citation to Virtanen at Column 3, Line 10, when viewed in its full context, is actually the recitation for a recipe of a liquid gravy which is "frozen upon the portion piece by spraying or by dipping the portion piece in the gravy" (Column 3, Lines 4-6). Therefore, the lower gravy layer, at the time of its application to the frozen portion piece is a liquid containing the "solids such as salt, sugar, and spices" and which are now in liquid form in the gravy. Thus, a solid is not applied in Virtanen.

Further, it is clear that the gravy referred to is a liquid mixture which contains the items (i.e., salt, sugar, and spices (Column 3, Line 10)) cited in the Office Action as being applied as solids. These items are not applied as solids to the frozen portion

piece, rather, they are constituents in the liquid gravy mixture in which the portion piece is dipped. When reading Virtanen completely from Column 3, Line 4 to Column 3, Line 14, it is clear that the items recited at Column 3, Line 14 are actually individual constituents of a liquid mixture which make up the "lower gravy layer" (Column 3, Line 4). That this "lower gravy layer" is a liquid is clear from the additional discussion regarding this gravy at Column 3, Lines 12-33.

Therefore, the constituents being applied in Virtanen are, in fact, not solids, rather, they are items that were formerly solid and are now dissolved within a liquid mixture or, at best, solids which are suspended within the vegetable oil and/or other liquid which are then sprayed onto the frozen portion piece.

By contrast, in Claim 1, the method steps claim:

"dispensing a layer of a liquid mixture onto a surface,
allowing the solid to form from the liquid mixture, . . ."

Then, onto this formed solid, a second "preexisting solid" is dispensed onto that formed solid. This application of a solid onto a solid is then followed by scrapping the first formed solid, plus whatever dispensed "preexisting solid" that is attached thereto, from the work surface. Clearly these steps are completely different from what is accomplished in Virtanen which is the application of a liquid gravy onto a frozen solid portion piece or the dipping of the frozen solid portion piece into a liquid gravy.

Therefore, as the rejection of Claims 1-6 under 35 U.S.C. 103(a) is based upon a combination of Miller in view of Virtanen, and as Virtanen does not teach the adding of solid particles onto the solid as described above, it is believed that independent Claims 1 and 4 are not made obvious by the combination of Miller and Virtanen, and that

independent Claims 1 and 4 are allowable and, therefore, dependent Claims 2 and 3 which claim from Claim 1 and dependent Claims 5 and 6 which depend from Claim 4 also are allowable.

Claims 8-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al in view of Virtanen and in view of Lansbergen et al.

The citation to Lansbergen, et al. as teaching a method of making flat flakes by adding savory components such as olive oil to the flakes and the use of different fat combinations of fats does not teach the present invention. An examination of the Lansbergen reference at Column 5, Lines 59-67 and Column 6, Lines 21-67 show that Lansbergen teaches the making of a mixture comprising a liquid oil such as palm oil (PO44) (See, Column 4, Lines 28-29 of Lansbergen) to which are added the other constituents identified in the Lansbergen reference such as powdered sugar, ground cinnamon, sugar saline. Lansbergen goes on to state at Column 6, Lines 21-67 that this mixture is mixed until it is uniformly smooth, it is kept in a liquid state (45-50° C (Column 6, Line 32)) until it is placed on the cooling belt and passed through the cooling tunnel after which the solid material is flaked and packed for distribution. The Lansbergen reference does not claim or teach the dispensing of a layer of a second fat onto a work surface where it forms a solid then dispensing a liquid mixture onto the formed solid second fat and allowing the liquid mixture to also form a solid. Lansbergen simply teaches the formulation of a particular liquid mixture which is then deposited onto a belt for cooling in a cooling tunnel.

Therefore, the combination of Miller and Virtanen and Lansbergen do not teach or make obvious, separately or in combination, the steps of Claim 8 or the steps of

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Claim 10 wherein a layer of a second fat is dispensed onto a cooling surface and allowed to solidify whereupon a layer of the liquid mixture is dispensed onto the solid second fat, and the liquid is allowed to solidify.

The Applicant believes that Claims 8-12 are not made obvious by the combination of Miller and Virtanen and Lansbergen as Miller teaches the use of a specific fat form, and Virtanen and Lansbergen teach the making of liquid mixtures which are then applied to a surface (a frozen food portion in Virtanen and a cooling belt in Lansbergen) for cooling and solidification of the liquid mixture. None of the references cited-Miller, Virtanen and/or Lansbergen-teach separately or in combination the particular method steps claimed in the present invention. Specifically, these references, individually or in combination, teach only the application of a liquid mixture to a cold surface. Miller simply teaches the application of a homogenous mixture to a moving belt which is passed through a cooling tunnel. Virtanen teaches only the application of a liquid gravy to a frozen food portion. Lansbergen teaches only the creation of a mixture which is applied to a cooling belt which is passed through a cooling tunnel.

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The Applicant believes that all claims are now in condition for allowance. Reconsideration of the application as amended respectfully is requested. The foregoing amendment and remarks are believed to be responsive to every matter raised in the office action. However, if some matter has been overlooked, an opportunity to correct the oversight would be appreciated.

Respectfully submitted,



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